BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

TERRY DUANE EIDET	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,008,393
JIFFY LUBE/J. V. ENTERPRISES	)	
Respondent	)	
AND	)	
	)	
WESTPORT INSURANCE CORPORATION	)	
and AIG	)	
Insurance Carriers	)	

ORDER

Respondent Jiffy Lube and its insurance carrier AIG appeal the February 6, 2003 Order of Administrative Law Judge Bruce E. Moore. Claimant was awarded temporary total disability benefits and insurance, with the benefits to be apportioned equally between Westport Insurance Corporation (Westport) and AIG.

AIG disputes the Order, arguing that claimant's accidental injuries, while stipulated, occurred during the coverage of Westport and not AIG. That is the only issue before the Appeals Board (Board) for its consideration.

ISSUES

(1) Did claimant suffer accidental injury arising out of and in the course of his employment during the coverage of AIG Insurance?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Board finds that this matter is not within the jurisdiction of the Board to review and should be dismissed.

Claimant, a lower bay technician or pit technician for respondent, suffered a burn injury to his right arm on April 29, 2002. While being treated for the burn, he noticed

numbness in the fourth and fifth fingers of his right hand. He was referred to orthopedic surgeon Pat D. Do, M.D.

Claimant was provided treatment and his job responsibilities were modified when he was transferred to a courtesy technician job on August 30, 2002. This job required less repetitive activities and did not cause claimant the same amount of discomfort while working.

The Administrative Law Judge found both Westport (which had the coverage with respondent through August 31, 2002) and AIG (which began providing coverage on September 1, 2002) to be equally responsible for the benefits. There is no dispute regarding the fact that claimant suffered an accidental injury arising out of and in the course of his employment. The only dispute before the Board is the appropriate date of accident and which insurance carrier is responsible for the treatment.

K.S.A. 44-534a limits the issues which can be considered on appeal from a preliminary hearing to those involving the specific jurisdictional issues of whether the employee suffered accidental injury, whether the injury arose out of and in the course of the employee's employment, whether notice is given or claim timely made, or whether certain defenses apply. These issues are considered jurisdictional and subject to review by the Board. The Board can also review orders from preliminary hearings if it is alleged the administrative law judge exceeded his or her jurisdiction in granting or denying the relief requested at preliminary hearing.

The Board has held, on many occasions, that date of accident, for the purposes of determining which insurance company is liable, is not a finding of fact that is reviewable from a preliminary hearing order.[1]

There is no dispute here that claimant suffered accidental injury arising out of and in the course of his employment with respondent. The only dispute is the appropriate date of accident for the purpose of determining which insurance company is liable. As noted above, that issue is not jurisdictional under either K.S.A. 44-534a or K.S.A. 2001 Supp. 44-551. Therefore, the appeal by respondent in this matter should be dismissed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bruce E. Moore dated February 6, 2003, remains in full force and effect and the appeal of respondent should be, and is hereby, dismissed.

---

[1] *Carlson v. Metro Express*, Nos. 248,200 & 268,381, 2002 WL 985408 (Kan. WCAB Apr. 26, 2002); *Anthony v. PSI Group, Inc.*, Nos. 265,870 & 265,871, 2001 WL 1399482 (Kan. WCAB Oct. 26, 2001); and *Hoss v. Standard Beverage Corporation*, No. 259,486, 2001 WL 125018 (Kan. WCAB Jan. 31, 2001).

IT IS SO ORDERED.

Dated this ____ day of March 2003.

BOARD MEMBER

c: Patrik W. Neustrom, Attorney for Claimant
David P. Mosh, Attorney for Respondent and Westport
Christopher J. McCurdy, Attorney for Respondent and AIG
Bruce E. Moore, Administrative Law Judge
Director, Division of Workers Compensation